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STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

COUNTY OF HAWAII,

Petitioner.

CASE NO. RA-13-226

DECISION NO. 465

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

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On March 28, 2007, the COUNTY OF HAWAII ("County" or "Employer") filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board ("Board"). In its petition, the County alleged that the duties and responsibilities of new Position No. OO-04672, Business Manager, EM-03, warrant its exclusion from collective bargaining as top-level managerial position as the positions will serve as the head of the new Business Services Division in the Department of Environmental Management and will direct the fiscal and personnel programs for the department. Michael R. Ben, County Director of Human Resources and Petitioner's representative, states in an affidavit attached to the petition, that the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO ("HGEA") concurs with the exclusion of the position.

Based upon a review of the petition, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The COUNTY OF HAWAII is the public employer, as defined in Hawaii Revised Statutes ("HRS") § 89-2, of the employees of the County, including the employees in bargaining unit 13.
2. The HGEA is the exclusive representative, as defined in HRS § 89-2, of employees in bargaining unit 13.
3. According to the position description for Position No. OO-04672, Business Manager, EM-03, the position serves as the head of the Business Services Division of the Department of Environmental Management and is responsible to plan, direct, and administer the department's financial affairs including all fiscal, contracting, and personnel matters in collaboration with the Director to

obtain the financial objectives based on the department's goals and policies; and formulates and recommends approval of policies and programs for the department's financial and organizational planning and analysis activities.

The position performs the following duties in the approximate percentages of time:

- a. Plans, directs, and oversees the fiscal and personnel activities of the Department/Divisions; assigns and supervises the work of all accounting and personnel staff in the department; oversees the organization, staffing and personnel requirements of all divisions. Oversees the fiscal management for federal and state grant and loan programs. 25%.
- b. Oversees the preparation of and assists the Director with the review of the annual budget; directs studies and the preparation of estimates and projections of departmental requirements and compares with estimated revenues; and monitors the budget during the fiscal year. 20%.
- c. Develops and establishes objectives for the Administrative Division consistent with departmental goals. Formulates and recommends departmental policies and procedures relating to business, financial, and personnel matters. Develops and implements internal procedures for the recording of transactions relating to revenue, expenditures, payroll, reimbursements, and cash flow. Develops and implements modifications and/or new fiscal regulations and laws such as sewer and solid waste user fees, facility charges, and other financial issues. Develops and implements collection procedures for receivables in special fund accounts. 20%.
- d. Oversees and coordinates the department's programs relating to contracting for services and the purchase of supplies, materials, and equipment; establishes internal policies and procedures to ensure a consistent departmental application of County and State procurement requirements for services, equipment, and supplies. Arranges, directs, and conducts site audits of contractors when required. 20%.
- e. Develops and implements internal procedures relating to labor relations, recruitment, personnel actions, and new positions. Provides interpretive and advisory services concerning fiscal and personnel matters to the Director and Division Chiefs, and other personnel in the Department; attends staff meetings, provides appropriate training in fiscal procedures and conducts internal audits and studies as needed.

Attends meetings and conferences concerning fiscal matters such as budget instruction meetings, budget hearings, State sewer revolving fund, accounting and procurement procedure meetings to provide appropriate oversight to insure that the Department and its Divisions are complying with all applicable county, state and federal fiscal requirements. 10%.

- f. Plans, directs and oversees the operation and development of the department's integrated computer system. Performs other related duties as assigned. 5%.

Exhibit B.

- 4. By letter dated February 26, 2007, Deputy Director of Human Resources Ronald K. Takahashi ("Takahashi") notified HGEA Executive Director Russell Okata ("Okata") of the proposed exclusion of the new Business Manager position from bargaining unit 13 as the position would be a division head responsible for planning, directing, and administering the Department of Environmental Management's financial and personnel functions. Takahashi requested the HGEA's concurrence with the proposed exclusion. On March 8, 2007, Ralph Boyea, HGEA's Hawaii Division Chief, concurred with the proposed exclusion.

Exhibit A.

- 5. According to the class specifications, the Business Manager manages the business affairs of the department or institution; maintains fiscal, personnel, and administrative controls; supervises the purchasing of supplies; and advises management on all administrative problems.

Exhibit C.

- 6. According to the Position Organization Chart for the Department of Environmental Management, the Business Services Manager, reports to the Deputy Director and supervises the personnel and fiscal functions, consisting of the Administration, Solid Waste and Wastewater sections, of the department.

Exhibit D.

- 7. The Board finds that Position No. OO-04672, Business Manager, EM-03, as the division head responsible for planning, directing and administering the

department's financial and personnel functions, will exercise considerable discretion in developing objectives and directing the work of the division.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject petition pursuant to HRS § 89-6.
2. HRS § 89-6(f) provides, in part, as follows:

The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

* * *

- (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county agency or major division, and legal counsel;
3. In interpreting the exclusionary language of HRS § 89-6, the Board, in various decisions, established criteria which must be met in order to justify an exclusion. In determining whether an individual occupies a top-level managerial or administrative position, the Board, in Decision No. 75, Hawaii Nurses Association, 1 HPERB 660 (1977), stated, in pertinent part:

This board believes that the proper test of whether an individual occupies a top-level managerial and administrative position includes measuring the duties of the position against the following criteria:

1. The level at and extent to which the individual exercises authority and judgment to direct employees, determine methods, means and personnel, by which the employer's operations are to be carried out; or
2. The extent to which the individual determines, formulates, and effectuates his employer's policies.

Id., at 666 [footnotes omitted].

4. In Decision No. 95, Hawaii Government Employees' Association, 2 HPERB 105 (1978), the Board supplemented this criteria by stating:

In order to be determined to be a top level management or administrative position, a position must:

(1) be at or near the top of an on-going complex agency or program; or

(2) direct the work of a major program or an agency or a major subdivision thereof with considerable discretion to determine the means, methods, and personnel by which the agency or program policy is to be carried out; or

(3) operate in a management capacity in a geographically separated location, such as a Neighbor Island, and be responsible for representing management in dealing with a significant number of employees.

Id., at 143.

Because policy formulation is an important factor in the determination of managerial status, the meaning to be given to the term *policy* is important and warrants discussion.

The New York PERB, in a leading case of that Board, has defined the term *policy* which this Board adopts. The New York PERB stated in State of New York, 5 PERB 3001 (1972) at p. 3005:

We will first discuss the "policy" criterion and later the other three criteria. It would appear desirable to first consider the term "policy." Policy is defined in a general sense as "a definite course or method of action selected from among alternatives and in the light of given conditions to guide and determine present and future decisions." In government, policy would thus be the development of the particular objectives of a government or agency thereof in the fulfillment of its mission and the methods, means and extent of achieving such objectives.

The term "formulation" as used in the frame of reference of "managerial" would appear to include not only a person who has the authority or responsibility to

select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect. It would not appear to include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data necessary for the development of a policy proposal. [Footnotes omitted.]

* * *

It is assumed that all persons in State government, except for elected officials, judges and certain other officers not here relevant, have supervision and that their decisions technically take the form of recommendations subject to approval by higher authority. It is the function of a position, not its place on the organizational chart upon which top-level manager or administrator is based. "It is not whether a person definitely establishes policy but rather the individual's regular participation in the policy-making process which determines managerial status. Absolute discretion or authority to act is not a prerequisite to finding that an individual formulates policy. What matters is the fact of participation at a fundamental level in the decision making process, not the participant's batting average in having his views prevail." State of New York, supra.

Id., at 144-45.

6. Based upon a review of the duties and responsibilities of Position No. OO-04672, Business Manager, EM-03, the Board concludes that the position is at or near the top of an ongoing complex agency and directs the work of the personnel and fiscal divisions of the Department of Environmental Management. Thus, the position will exercise considerable discretion in developing and implementing the department's programs and policies by formulating department's budget and short and long range plans and goals. In addition, the position oversees the administrative functions of the division, including fiscal and personnel matters. As such, the position has significant authority and latitude for individual initiative and independent judgment in the overall administration and operations management of the department. Based on the position's duties and responsibilities, the Board concludes that the

position is a top-level managerial position and should be excluded from bargaining unit 13 and coverage under HRS Chapter 89.

ORDER

Position No. OO-04672, Business Manager EM-03, is hereby excluded from collective bargaining unit 13, and the coverage of HRS Chapter 89 as a top-level managerial employee.

DATED: Honolulu, Hawaii, April 26, 2007.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

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